IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12381 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISIONAL CONTROLLER

Versus

RATILAL D. SODHA

Appearance:

1. Special Civil Application No. 12381 of 2002

MR HS MUNSHAW for Petitioner No. 1

MR MH RATHOD for MR PRABHAKAR UPADYAY for Respondent

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/07/2004

ORAL JUDGEMENT

1.0. The petitioner Gujarat State Road Transport Corporation by way of this petition has challenged the

judgment and award of the Industrial Tribunal, Rajkot dated 29th January, 2002 in Reference [I.T.R.] No. 261 of 1992 whereby, the Tribunal while exercising power under Section 11-A has substituted penalty of putting the workman in the minimum payscale and substituted the penalty of stoppage of three increments without future effect and also directed the petitioner - Corporation to pay backwages from the date of retrenchment till reinstatement.

2.0. The short facts of the case are that the respondent - workman was working as conductor with the Corporation. He had remained absent from duty from 1st November, 1987 continuously without any prior permission of the authority of the Corporation or without any sanctioned leave. It is the case of the petitioner that the Corporation had sent telegram to the respondent workman on 8th December, 1987 and had also sent a letter by Registered A.D. post on 1st January, 1988. But somehow the respondent - workman has not accepted either the telegram or the letter sent through Registered A.D. post by the Corporation. Thus, the administration had to face lot of difficulties. Not only that, they have suffered hardship and monetary loss. After holding departmental inquiry, the Corporation has followed the procedure of principles of natural justice and has imposed penalty of dismissal by order dated 11th July, 1988.

2.1. Being aggrieved by the order of dismissal, the respondent - workman preferred First Appeal, which came to be rejected on 29th April, 1989. It is stated that thereafter the respondent - workman preferred Second Appeal and the Second Appellate Authority, after considering all the aspects partly allowed the appeal by order dated 28th November, 1995 and modified the order of dismissal whereby the Second Appellate authority directed the petitioner - Corporation to reinstate the respondent workman with continuity of service and directed to consider the period from dismissal to reinstatement as leave without pay and has also imposed penalty by placing him on his original payscale of conductor.

2.2. Being aggrieved by the decision of the Second Appellate authority, the respondent - workman has approached the Court by way of filing Reference No. 261 of 1992. The petitioner - Corporation resisted the said Reference by filing their detailed reply and also placed the entire record of the inquiry as well as the past record of the respondent - workman. However, without considering the evidence and submissions, the Industrial

Court partly allowed the Reference and has set aside the decision of the Second Appellate Authority and directed to pay all the consequential benefits and only imposed minor penalty of stoppage of three increments without future effect. It is this order which is now under challenge in this petition.

3.0. Mr. Munshaw learned advocate for the petitioner Corporation has submitted that the Industrial Court has wrongly exercised power under Section 11-A of the Industrial Disputes Act inasmuch as the respondent workman had remained absent for more than eight months without prior permission and without sanctioning leave and also looking to the financial loss and administrative inconvenience, the Industrial Court ought not to have interfered with the penalty imposed by the Second Appellate Authority. Mr. Munshaw further submitted that the respondent workman has committed misconduct, and had voluntarily remained absent, therefore, this is a fit case where atleast the order of Tribunal is required to be quashed and set aside and the order of the Second Appellate Authority is required to be restored.

3.1. As against that Mr. Rathod learned advocate for the respondent - workman has opposed this petition and submitted that the order passed by the Tribunal is just and proper. He has further stated that stoppage of three increments without future effect is harsh inasmuch as the respondent - workman has not been paid salary by the petitioner - Corporation though he was sick for long period.

4.0. Having carefully gone through the record of this petition and having carefully considered the submissions of both the learned advocates, it appears that the Tribunal has interfered in this case, looking to the facts and circumstances of the case, and has substituted the penalty by way of stoppage of three increments with future effect. The ends of justice will be served if the order is modified to the extent that the respondent workman will not get any salary as directed by the Second Appellate Authority i.e. from the date of dismissal to reinstatement and the order is modified to the extent that the respondent workman will suffer penalty of stoppage of three increments with future effect and will not be paid salary as directed by the Tribunal. Order accordingly.

In the result the petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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